IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1820 OF 1986.

1. M/s.National Textile Corporation Ltd., New Delhi, a Government company incorporated under the Companies Act I of 1956 having its registered office at Surya Kiran Building, Kasturba Gandhi Marg, New Delhi.

2. M/s.National Textile Corporation (S.M.) Ltd., a Government Company incorporated under the Companies Act I of 1956 having its registered office at N.T.C. House 13, N.M.Marg, Ballard Estate, Bombay 400 038. ... Plaintiffs

Versus.

M/s.S.B.M. Engineering Products Pvt.Ltd. Company registered under Companies Act I of 1956 carrying on business at 120, Great Western Building, Nagindas Master Road, Extension Fort, Bombay 400 023. ... Defendant.

Shri S.R.Mishra i/by Ms.Poonam Srivastava for the Plaintiffs.

Shri R.A.Shaikh for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 27th August, 2007.

ORAL JUDGMENT.:

1. By order dated 9th August 2007 this Court directed that the issue of limitation (Issue No.1-A) will be decided as a preliminary issue. Accordingly I have taken up issue No.1-A for hearing as a preliminary issue.

2. The learned Counsel appearing for the Plaintiff

stated that except for the affidavit in lieu of evidence of Shri Ramchandran Ravi, In-charge General Manager of the 2nd Plaintiff, the Plaintiffs do not desire to lead any evidence on the issue of limitation. The learned Counsel appearing for the Defendant stated that the Defendant also does not desire to cross-examine the said witness of the Plaintiff on the issue of limitation and the Defendant does not desire to lead any evidence on the issue of limitation. The learned Counsel for the Defendant stated that the Affidavit of Shri Ramchandra Ravi may be treated as the evidence of the Plaintiffs.

3. For the purpose of appreciating the submissions made by the learned Counsel appearing for the parties, the facts of the case will have to be referred to in brief. According to the case of the Plaintiffs by the Textile Undertaking (Taking Over the Management) Ordinance, 1983 the management of 13 textile undertakings, more particularly mentioned in the first schedule to the said Ordinance vested in the Union of India. On the basis of the provisions of the Ordinance, the Union of India appointed the National Textile Corporation Ltd. New Delhi as a Custodian in respect of the those textile mills. The said Custodian by order dated 18th October 1983 appointed National Textile Corporation (South Maharashtra) Ltd., the 2nd Plaintiff herein as an additional Custodian. As per the

provisions of the Textile Undertakings (Taking over of Management) Act, 1983, the management of the textile undertakings of the Elphinston Spinning and Weaving Mills Ltd. vested in the Custodian.

4. The Elphinston Spinning and Weaving Mills Ltd. had placed an order with the Defendant for supply of one Singeing Unit and Burners which was accepted by the Defendant by letter dated 1st April 1981. Under the said acceptance of the order, the Defendant had agreed to supply the said machine at the price of Rs.4,25,000/- within 10 to 12 weeks. Accordingly, the said Elphinston Spinning and Weaving Mills deposited with the Defendants a sum of Rs.1,27,500/- being 30% of the price of the machine.

5. It is the case of the Plaintiffs that the machine was to be delivered within 8 to 10 weeks. It is stated that in the year 1982-83 there was a strike in the said undertaking and therefore, the same was closed. On 26th July 1983 the Defendant forwarded proforma invoice for the sum of Rs.5,25,918.29 ps. and informed the Plaintiffs that 60% of the machine is ready and balance will be getting ready shortly.

6. After taking over the management of the said Elphinston Mills, the Plaintiffs realised from the

record that the Defendants have failed to manufacture the said machine and deliver the same. According to the case of the Plaintiffs by their letter dated 2nd January 1984 the Defendant informed the Plaintiffs that the said sum of Rs.1,27,500/- has been paid over to its sister concern M/s.Sherai Engineering Pvt.Ltd. as the said sister concern of the Defendant was to receive the price of the Jet Dyeing Machine supplied to the Elphinston Mills. By letter dated 27th March 1984, the Plaintiffs through their Advocate informed the Defendant that the Defendant had no right whatsoever to pay the said advance deposit to the sister concern. The Plaintiffs by the said letter called upon the Defendant to pay interest at the rate of 21% per annum from the date of advance payment till the amount is refunded by the Defendant to the Plaintiffs as the Defendant is justly and truly indebted to the Plaintiffs. In the suit a decree in the sum of Rs.2,55,139/- together with future interest in the sum of Rs.1,27,500/- at the rate of 21% per annum has been prayed for. In the written statement filed by the Defendant apart from the challenge to the claim of the Plaintiffs on merits, it is stated that the claim of the Plaintiffs is barred by limitation.

7. The learned Counsel for the Plaintiffs submitted that the cause of action arose when the Plaintiffs came to know from letter dated 2nd January 1984 that the

amount paid by the Plaintiffs to the Defendant has been transferred by the Defendant to M/s.Sherai Engineering Pvt.Ltd. He submitted that the period of limitation will not start running from 27th March 1981 when the sum of Rs.1,27,500/- was paid. He submitted that in fact the cause of action for filing suit has arisen when the letter dated 2nd January 1984 was received from the Defendant informing the Plaintiffs that the Defendant had transferred the said sum of Rs.1,27,500/- to its sister concern. He submitted that the suit will be governed either by clause (b) of Article 91 of the First Schedule to the Limitation Act, 1963 or the period of limitation will be three years under Article 113 of the said Act. He submitted that at highest the cause of action first arose on 26th July 1983 when the Defendant forwarded to the Plaintiff a proforma invoice in the sum of Rs.5,25,918.39 ps. He pointed out that in the letter dated 26th March 1983 itself the Defendant had stated that 60% of the machine was ready and the balance would be getting ready shortly.

8. The learned Counsel appearing for the Defendant submitted that the Plaintiffs have not produced on record the alleged letter dated 2nd January 1984. He submitted that in any event the cause of action arose when the Defendant failed to supply machine within the time agreed. He submitted that the suit filed in the

year 1986 was clearly barred by law of limitation.

9. I have considered the submissions. It is an admitted position that a sum of Rs.1,27,500/- was paid by the Plaintiffs to the Defendant on 27th march 1981. As per the terms of the agreement, the Defendant had agreed to supply the machine within 10 to 12 weeks. According to the case of the Plaintiffs on 26th July, 1983, the Defendant forwarded proforma invoice for Rs.5,25,918.39 and informed the Plaintiffs that 60% of the said machine is ready. Reliance is placed on letter dated 2nd January 1984 allegedly written by the Defendant to the Plaintiffs stating that it has transferred the said amount of Rs.1,27,500/- to its sister concern which was entitled to receive the said amount from the Plaintiffs under a different transaction.

10. It must be stated here that even according to the case of the Plaintiffs, the Defendant was to supply the machine within 10 to 12 weeks. Thus after expiry of 12 weeks from 1st April 1981 (i.e. the date of acceptance of the order by the Defendant) the Elphinston Mills had a notice that the Defendant has failed to perform its part of the contract. Therefore, the cause of action for filing the suit arose when the Defendant failed to supply the machine within 12 weeks from 1st

April 1981. Merely because an invoice was forwarded by the Defendant on 26th July 1983, it will not change the starting point of limitation. By the said letter dated 26th July 1983 the Plaintiffs were called upon to pay the balance amount and the Defendant had shown readiness and willingness to give credit for the sum of Rs.1,27,500/-. Thus the Defendant had agreed to give credit provided the sum of Rs.3,98,418.39 ps. was paid by the Plaintiffs to the Defendant.

11. Reliance placed by the Plaintiffs on letter dated 2nd January 1984 will not help the Plaintiffs. Firstly the said letter is not placed on record. The Plaintiffs made no effort to lead secondary evidence of the said letter. Therefore, letter dated 2nd January 1984 cannot be considered for deciding the issue of limitation. According to the Plaintiffs the cause of action is based on the contents of the said letter.

12. I have also perused the affidavit in lieu of examination-in-chief of Shri Ramachandran Ravi of the 2nd Plaintiff. In the said affidavit it is not stated that after receiving the proforma invoice dated 26th July 1982, the Plaintiffs showed readiness and willingness to pay the balance amount and to take the machine. The learned Counsel for the Plaintiffs has relied upon clause (b) of Article 91 of the Limitation

Act, 1963. Assuming that the said clause (b) of Article 91 of the said Act is applicable, it is obvious that the possession of the said amount of Rs.1,27,500/- by the Defendant became unlawful when the Defendant failed to supply the machine within the period of 12 weeks from 1st April 1981. Therefore, the cause of action for filing the said suit arose in the year 1981 itself. The learned Counsel for the Plaintiffs tried to rely upon Article 113 of the said Act. Even applying Article 113, the suit will not be within limitation as the cause of action arose in the year 1981 itself. The communication dated 1st April 1981 records that the said machine will be supplied by the Defendant within 10 to 12 weeks. Thus the cause of action for filing the suit first arose on expiry of 12 weeks from 1st April 1981. The action of issuing the proforma invoice on the part of the Defendant on 26th July 1983 will not extend the period of limitation or will not stop the period of limitation which started running on expiry of period of 12 weeks from 1st April 1981. As stated earlier, the letter dated 2nd January 1984 is not produced by the Plaintiffs. The suit is filed in April 1986.

13. The sum and substance of the aforesaid discussion is that the suit is barred by law of limitation. Accordingly the issue of limitation will have to be answered against the Plaintiffs by holding

that the suit claim is barred by law of limitation. The suit is accordingly dismissed on the ground that the same is barred by limitation. There will be no order as to costs.

Judge.